

**WAUKESHA COUNTY
MINUTES OF THE PARK AND PLANNING COMMISSION
THURSDAY, APRIL 28, 2005, 1:00 P.M.**

CALL TO ORDER

Walter Baade, Chairperson, called the meeting to order at 1:00 p.m.

Commission

Members Present:	Walter Baade	Pat Haukohl	Gary Goodchild
	Walter Kolb	Betty Willert	

Commission

Members Absent:	Ellen Gennrich	Mareth Kipp
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Staff

Members Present:	Richard L. Mace, Planning and Zoning Manager
	Kathy Moore, Senior Planner
	Kathy Brady, Secretary Supervisor

Guests Present:	Brian Turk	Jeff Ek	Barbara Michaels
	Gayle Schmitt	Rebecca Roeker	Brian Porter

PUBLIC COMMENT

Chairperson Baade asked if anyone from the audience wished to address the Commission? There being no one, he moved to the next item on the agenda.

SCHEDULED MATTER

- **Schedule Commission Meeting Dates for August, September and October 2005.**

The meeting dates were scheduled as follows:

August 4 and 18, 2005
September 1 and 15, 2005
October 6, 2005
November 3 and 17, 2005
December 1 and 15, 2005

- **CU-1157B (James and Barbara Michaels and Mark Moldenhauer) Town of Ottawa, Sections 3 and 10**

Mr. Mace presented the "Staff Report and Recommendation" dated April 28, 2005, and made a part of these Minutes. He pointed out the location of the property at W364 S2226 Mill Pond Road and W366 S2430 Mill Pond Road in the Town of Ottawa on the aerial photograph and stated the petitioner is requesting an Unspecified Conditional Use to host a small professional water ski tournament, open to the public, with parking on an adjacent property.

Mr. Mace said there is an old north-south (pre-1920) abandoned railroad line west of Mill Pond Road, which is owned by the State and appears to be 50' wide. The petitioner would need approval from the DNR for the public to cross the right-of-way to access the event site from the parking lot. He pointed out on the aerial photograph the parking area and the viewing area. Mr. Goodchild noted the field which would be used for the parking lot is flat. Mrs. Haukohl asked, how many acres is the lake? Mr. Ek (Attorney for the petitioner) replied, approximately 15 to 16 acres in size. Mrs. Haukohl asked what the smaller pond next to the lake was? Mr. Mace responded, the smaller pond and a larger narrow pond on

the east side of the lake is used for stormwater management. Mr. Goodchild noted that no neighbor's spoke against the request at the Town Plan Commission meeting and everyone seemed to be in favor of the event. Mrs. Haukohl wondered since the Village of Dousman police have no authority in the Town of Ottawa and the County Sheriff would provide deputies for the event, who would pay for their services? Mr. Goodchild replied, the Town does not anticipate the need for Sheriff's services. Mr. Mace asked if private security would be provided to which Mr. Ek replied, "Yes", and noted that the Chief of the Dousman Police Department, his deputies and volunteers would be in charge of the event. A condition of the Town was that approval from the County Sheriff be received for the event. He submitted a letter from Sheriff Trawicki approving the event. Mr. Ek added that there would be no alcohol served at the event.

Mr. Ek referred to Condition No. 14, which states that "amplified recorded music is allowed between events". He noted there will be no live bands, however, there may be amplified recorded music during some of the events. He added, the event is a family event and the speakers would face to the west, which is a non-residential area. He asked if the wording could be modified to read "amplified recorded music is allowed?" The Commission agreed. Mr. Ek said that Condition No. 26 states that "Only one boat shall be used on the lake during the event". He noted that only one boat would be used for a particular event but there would be a second boat in the pond for staging and safety measures. He asked if the wording in Condition No. 26 could be modified to read that an additional boat would be allowed on the lake for safety purposes? The Commission agreed.

After discussion, Mrs. Haukohl moved, seconded by Mr. Goodchild and carried unanimously, for approval, as conditioned, in accordance with the "Staff Report and Recommendation" with modifications to Conditions No. 14 and 26 which will now read:

- 14. No live bands are permitted. Amplified recorded music is allowed. The speakers must face in a westerly direction. Any other adverse noise related issues identified during the event shall be properly addressed immediately during the event or the permit may be revoked.*
- 26. Only one boat shall be used on the lake during an event. One additional boat will be allowed on the lake for safety purposes only.*

The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

• **PO-05-OTWT-3 (James and Barbara Michaels and Mark Moldenhauer) Town of Ottawa, Sections 3 and 10**

Mr. Mace presented the "Staff Report and Recommendation" dated April 28, 2005, and made a part of these Minutes. He pointed out the location of the property at W364 S2226 Mill Pond Road and W366 S2430 Mill Pond Road in the Town of Ottawa on the aerial photograph and stated the petitioner is requesting a Site Plan/Plan of Operation to host a small professional water ski tournament, open to the public, with parking on an adjacent property.

Mr. Mace indicated the matter is related to the previous Conditional Use request CU-1157B.

After a brief discussion, Mrs. Haukohl moved, seconded by Mrs. Willert and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation” with modifications to Conditions No. 14 and 26 as stated above. The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

- **CU-1399 (Ron and Karla Schurman (Commercial Wholesale Company) Town of Vernon, Section 2**

Mr. Mace presented the “Staff Report and Recommendation” dated April 28, 2005, and made a part of these Minutes. He pointed out the location of the property at W232 S6845 Millbrook Circle in the Town of Vernon on the aerial photograph and stated the petitioner is requesting a Limited Family Business Conditional Use for the operation of a commercial wholesale business.

Mr. Mace said the request was previously before the Commission and was placed on hold until the Limited Family Business provision was approved under the recent amendments to the Waukesha County Zoning Code. The business would be operated from a portion of the petitioner’s detached garage. At the public hearing, two residents of the subdivision spoke in opposition of the proposal. They expressed concerns regarding the number of trucks parked on the property, the fact that trucks are parked outside and deliveries were made by semi-trucks. Mr. Mace said that Condition No. 5, limits the size of the trucks to a one-ton van or pickup type chassis so as not to become an issue for the Town road weight limits and one truck must be kept indoors.

After discussion, Mrs. Willert moved, seconded by Mr. Goodchild and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

- **PO-05-VNT-2 (Ron and Karla Schurman/Commercial Wholesale Company) Town of Vernon, Section 2**

Mr. Mace presented the “Staff Report and Recommendation” dated April 28, 2005, and made a part of these Minutes. He pointed out the location of the property at W232 S6845 Millbrook Circle in the Town of Vernon on the aerial photograph and stated the petitioner is requesting a Site Plan/Plan of Operation for the operation of a commercial wholesale business.

Mr. Mace indicated the matter is related to the previous Conditional Use request CU-1399.

After a brief discussion, Mrs. Willert moved, seconded by Mrs. Haukohl and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

- **CU-1401 (Michael B. Trease/Trease Painting Co. Inc.) Town of Vernon, Section 20**

Mr. Mace presented the “Staff Report and Recommendation” dated April 28, 2005, and made a part of these Minutes. He pointed out the location of the property at S87 W27025 C.T.H. “ES” in the Town of Vernon on the aerial photograph and stated the petitioner is requesting a Limited Family Business Conditional Use for the operation of a painting contractor's business.

Mr. Mace indicated the Certified Survey Map (CSM) for the property indicates a 33' wide easement for a public road along the west lot line of the property. The easement was placed on three CSM's in the vicinity to accommodate a future possible public road to allow further land division. The County Department of Public Works has indicated they would not allow another street to access at this proposed location, which would negate a part of this future street from becoming a reality. One of the Town's conditions is that the road easement be removed. He pointed out on the aerial photograph ten surrounding properties, that were part of a CSM, which was approved with a proposed public road easement on a number of the lots. The Town and County both agree the easement does not belong, however, the petitioner would not be able to receive Conditional Use and Plan of Operation approval for his business until or unless the easement is removed. In addition, a shed is proposed to be built next to the petitioner's driveway for the business, however, it would not meet the setback standards from the proposed public road. A few of the neighboring property owners have been questioning when the public road would be built so they could split their lots and some did not know the easement for the road even existed. He mentioned that it may be difficult for all of the surrounding property owners to agree to remove the easement.

The Planning and Zoning Division Staff is recommending the matter be referred back to the Town to consider elimination of the requirement for the street vacation or altering the requirement. Mrs. Willert asked how some of the lots to the south have access to their properties? Mr. Mace identified on the aerial photograph how access is obtained. Mr. Goodchild said it would make more sense if the road was looped where there is currently an intersection for the property owners to the south who wish to retain the easement. Mr. Mace said another issue is that the Highway Department will not allow an additional public road to C.T.H. "ES" where the easement enters C.T.H. "ES". Mr. Mace suggested the road easement could be eliminated from C.T.H. "ES" through the first three lots and the cul-de-sac could be extended to accommodate the road to the west then south to the southerly parcels. The Town has a few options to vacate all or a portion of the road. Mr. Turk, Town Planner said that the Town Attorney recommended that the applicants work with their title company to see what would satisfy the title company. Mr. Goodchild asked if the easement could be removed from the Trease property only? Mr. Turk replied that he thought that was what would be done. Mr. Goodchild asked if the Town's recommendation is that all of the easements were to be vacated? Mr. Mace responded, "The Town did not specify that fact". Chairperson Baade wondered whether the matter could be approved contingent upon the road easement being eliminated so the matter would not have to come back before the Commission to which some members of the Commission disagreed. Mr. Mace said if the Town clarified the condition by stating "The road easement affecting the Trease property be removed to the satisfaction of the Town Attorney and Town Planner" he would agree to the modification so the petitioner could proceed. Mrs. Haukohl thought it was better planning to send the matter back to the Town.

After discussion, Mrs. Willert moved, seconded by Mrs. Haukohl and carried unanimously, to refer the matter back to the Town, in accordance with the "Staff Report and Recommendation".

PO-05-VNT-3 (Michael B. Trease/Trease Painting Co. Inc.) Town of Vernon, Section 20

Mr. Mace presented the "Staff Report and Recommendation" dated April 28, 2005, and made a part of these Minutes. He pointed out the location of the property at S87 W27025 C.T.H. "ES" in the Town of Vernon on the aerial photograph and stated the petitioner is requesting a Site Plan/Plan of Operation for the operation of a painting contractor's business.

Mr. Mace indicated the matter is related to the previous Conditional Use request CU-1401.

After discussion, Mrs. Willert moved, seconded by Mrs. Haukohl and carried unanimously, to refer the matter back to the Town, in accordance with the “Staff Report and Recommendation”.

- **CS-962 (Gayle Schmitt) Town of Vernon, Section 14**

Mr. Mace presented the “Staff Memorandum” dated April 28, 2005, and made a part of these Minutes. He pointed out the location of the property on the north side of Edgewood Avenue, approximately $\frac{3}{4}$ mile west of S.T.H. 164 in the Town of Vernon on the aerial photograph and stated the petitioner is requesting to create a “flag” lot (lot not abutting a public road).

Mr. Mace indicated the property is approximately 12 acres in size. The issue had previously been before the Commission in 2001 and 2002 and was denied both times. The intent is to divide the parcel to create two parcels, approximately six acres in size each. There is an Electric Company Transmission line located on the property along with major soil issues, Environmental Corridor (EC) (on the north and northeast corner of the site) and safety access issues (the former Town Road Superintendent denied the access and the current Superintendent approved the access). In addition, there was a difference between the Town Plan Commission recommending denial of the Certified Survey Map (CSM) on February 3, 2004, and the Town Board approving the CSM on March 3, 2005, subject to several conditions. One of the conditions was that the owner must receive approval from both the Town of Vernon Plan Commission and the Waukesha County Park and Planning Commission for the creation of “lots not abutting a public road”. The Town Plan Commission is scheduled to discuss the matter at their April 28, 2005, meeting. The Planning and Zoning Division Staff indicates there has not been any significant changes since 2002. Mr. Goodchild asked if Parcel No. 1 (located in the southwest corner of the property) contained a residence and if it was a wetland? Ms. Schmitt petitioner, replied that Parcel No. 1 is a one-acre lot, which was divided from 13.8 acres, which she purchased. When the property was purchased, the zoning was R-1 Residential District. She owned the property for several years and in 2001 she presented to Ms. Moore (former Town of Vernon Planner) a plan to rotate the lot in order for all three lots to meet the minimum requirements of 150’ and was subsequently denied. She sold the one-acre lot which presently contains a residence and noted that it does not contain any wetlands.

Attorney Roeker introduced herself as the petitioner’s Attorney and said she would like to clarify some items on the “Staff Memorandum”. She noted the parcel is currently zoned RRD-5 Rural Residential Density 5 District. Mr. Mace added the parcel also contains EC zoning. Attorney Roeker said she has reviewed the intent of the RRD-5 zoning designation and indicated that it allows development at a low density in order to maintain its rural characteristic. The land division proposed would maintain the density of the RRD-5 on both parcels (six-acres each) to be created. Deed Restrictions can be crafted regarding the characteristics the County would like to see on the parcel. She said the petitioner is willing to Deed Restrict the property to restrict further development and specific uses to be conducted on the parcel. With regards to the preservation of the open space, the petitioner has owned the property for approximately 17 years and does not wish to rezone the property to a higher density as suggested by the Planning and Zoning Division Staff. With respect to the “flag lots”, the Zoning Ordinance states, even if the parcel abuts a public road (such as this parcel) if there is not a certain width it is deemed a “lot not abutting a public road”. The Ordinance indicates three specific requirements must be met in order to obtain a land division. The first requirement is the land must be at least three acres in area (petitioner meets this requirement), the second requirement is the parcels must have an average width of 200’ (petitioner meets this requirement) and the third requirement indicates access must be at least 33’ or a gravel or paved driveway of at least 12’ is required (petitioner is willing to meet this requirement). The requirements of Section 3.04(2) of the Zoning Ordinance are being met by the petitioner.

Attorney Roeker said the Town Board approved the land division and CSM and recognizes the parcel is unique in its shape and characteristics and is consistent with the surrounding area. She presented a map pointing out the surrounding parcels and indicated the parcels are long and narrow in shape and said the Town planned this area in this way. She is aware the request was denied by the Park and Planning Commission in 2001, however, the petitioner has taken many steps to meet the conditions set forth. Regarding Condition No. 2 of the "Staff Memorandum", the mound septic system site has been changed and is not an issue and once the lots are able to be sold, the Town Planner and Staff would have specific control over the development of the parcels. There are also discrepancies with the right-of-way lot line and the easterly lot line, however, the recording of the CSM will correct those discrepancies. The issue before the Commission today is whether the land division is appropriate.

Mrs. Haukohl asked about the septic placement? Mr. Mace replied, the septic system for Lot 2 is (based on the information submitted) designed to be located in the area to the north of the one-acre parcel. The Staff's concern is whether or not a driveway and residence could be placed in that area recognizing the high groundwater table conditions because the houses must be above the groundwater table. He added the petitioner doesn't wish to rezone the property to a higher density. The Staff is not advocating that the petitioner rezone to a higher density, but rather that the property be built in non Prime Ag soils or change the classification or rezone the property to the A-5 District (the same as RRD-5 District). Mrs. Haukohl asked, if the petitioner wants to disregard the Class I and II soils as far as construction, then would the zoning have to be changed to the A-5 District? Mr. Mace replied, "Yes", then the property would be out of the RRD-5 District which requires the residence to be out of the Class I and II soils. Attorney Roeker said the Ordinance states the RRD-5 District encourages building to be outside of the Class I and II soils. Mrs. Haukohl asked if the Ordinance states "encourages or requires" to which the Staff answered that it is required, and that is why they suggested the rezone.

Ms. Schmitt said the CSM has had five revisions, which corrected and clarified the location of the driveway and mound system. She added the driveway would be far enough away from the mound site (10' is required and 15' is proposed) and is indicated on the CSM. In addition, both of the driveway locations have been approved. Mr. Mace said he was unsure if that was correct. Mr. Turk said that Lot No. 1 can have its driveway anywhere on the lot according to the Town Engineer and Town Superintendent. The driveway for Lot No. 2 is to be located within the easement but as far east as practicable. Attorney Roeker said that could be achieved through a Deed Restriction.

Mrs. Willert asked where the EC zoning category is located? Mr. Mace replied, on Lot 1 the EC is located on the north end of the lot. Mrs. Haukohl said the building envelope is located in the EC. Attorney Roeker said the building envelope was placed on the CSM pursuant to the Planning and Zoning Division Staff's direction. Mr. Mace said the building envelope cannot be located in the EC if there is non-EC area available and disagreed with Attorney Roeker's view. Attorney Roeker said it could be a condition of approval that the building envelope be adjusted to accommodate the EC. Ms. Schmitt said according to her research, one building site in the EC is allowed as long as the acreage is over five acres and the parcels proposed are six-acres in size. If the building envelope is moved to the south it would be near the power line area and she noted the land dips downward. In addition, the surrounding residences are located in the wooded areas of the parcels and are only allowed to remove enough trees for the house and mound location. She has no objections to a stipulation being added stating that any trees removed, must be replaced. Mr. Mace said (referring Ms. Schmitt's statement regarding the location of the building envelope), that if the entire property is located in the EC, the petitioner is correct, however, if the property is partially in and partially out of the EC it would be incorrect and the building envelope would not be able to be located in the EC.

Mr. Turk (Town Planner) indicated the Town Board felt the configuration was a unique circumstance and was compatible with its surroundings. The Town's proposed Street map was considered which indicates a future street bisecting the properties in an east-west configuration but they recognized that Ms. Schmitt could not, on her own, develop the road pattern because it would rely on the surrounding properties to do the same. They decided not to consider it as a reason for denial. Mr. Turk noted that overall, there is a new Town Board with a new composition and they felt it was an appropriate exception.

Mr. Goodchild asked how the one-acre parcel on the south end of the property was created? Ms. Schmitt replied that originally the zoning was R-1 Residential and the intention was to develop the entire parcel into one-acre parcels. When the layout was approved, the Town's concern was if the remaining land contained enough room for an entrance for a road with a cul-de-sac and possibly another 10 or 11 one-acre parcels. From that time until today, the zoning changed to RRD-5 Rural Residential Density District 5 and the option no longer existed.

Mrs. Willert asked if the Electric Company's easement poses a problem for the driveway? Mr. Mace replied, "No". Mrs. Haukohl said referring the building envelope on Lot 1 (in the middle of the EC) that in order to be out of the EC it would have to be located south of the Electric Company's transmission line. Mr. Mace replied, "Yes". Mrs. Willert asked "Why isn't it located there?" Ms. Schmitt replied that most of the surrounding parcels have their residences set off the road and it is more desirable to build by the wooded area, the soils perked well in that location and Ms. Moore never told her to move the building envelope out of the EC and the building envelope was done per her request. Mr. Mace said the surrounding parcels were built prior to 1990 and the EC District was not in effect until 1990. Mrs. Willert asked what the restrictions were for building in the EC? Mr. Mace replied, if the property is zoned EC and the entire parcel is in the EC you can disturb up to 12% for the building site which is approximately 32,000 sq. ft. If the property is partially EC you would be limited to the building site being completely out of the EC. Attorney Roeker read the definition of EC from the Zoning Ordinance and disagreed with Mr. Mace regarding the interpretation of building in the EC. Mr. Mace disagreed and said the goal is to keep the EC intact without disturbance. Attorney Roeker said she was unsure of why Ms. Moore required the building envelope in the EC. Mrs. Haukohl asked, after hearing the arguments, what does the Staff recommend? Mr. Mace answered, "Nothing different than what the Staff Memorandum indicates". Attorney Roeker stated, since the Town has approved the matter and the petitioner has been working on the issue since 2001, if the Commission and petitioner cannot come to a finalization on the matter (in light of the Town's approval) the petitioner may have to pursue other options. Mr. Baade asked if the only issue was the building envelope being located in the EC? Mr. Mace replied, "Yes". Mrs. Haukohl said she did not agree and felt the building envelope should be located out of the EC. Mr. Mace asked Mr. Turk what the Town Plan Commission thought of the matter? Mr. Turk said some members of the Plan Commission wanted a cul-de-sac to serve the two lots, some felt the request was appropriate and some didn't like the request at all because of the flag lot and driveway access issues. He noted the vote was split. Mr. Goodchild asked if a majority of the Town Plan Commission didn't mind the two lots? Mr. Turk replied "Yes". Mr. Mace asked how was it explained that the previous Town Road Superintendent denied the driveway access and the current Town Road Superintendent approved the access. Mr. Turk replied that road and vision standards have changed. He noted that the Ruekert and Mielke Traffic Engineer indicated the driveway access is appropriate, provided that the driveway on Lot 2 be placed as far east as possible. Mrs. Haukohl asked what the restrictions were for building in Class I and II soils? Ms. Schmitt said this is not an area of contiguous farmland, to which Mr. Mace agreed. Mr. Mace replied that building is not allowed in Class I and II soils. He again reiterated the suggestion that the property be rezoned to the A-5 Mini-Farm District. Attorney Roeker disagreed and did not interpret the Ordinance in that way. Mr. Goodchild

asked, even if the Commission approves the CSM's, the petitioner would not be able to build a residence? Mr. Mace answered "Yes", that is the problem which can be resolved by rezoning the land to the A-5 Mini Farm District. Ms. Schmitt disagreed and pointed out other adjacent residences, which were built within the last two years. Attorney Roeker stated what has been presented before the Commission is a land division and the requirements have been met. The building issues are important, however, they should be reviewed by Staff once the Building and Development Plans are submitted. Mrs. Haukohl said if two lots are being created which are unbuildable, it would not be appropriate. Attorney Roeker stated the petitioner has the right to divide the land. Mr. Mace suggested the matter could be deferred to the next Commission meeting until Ms. Moore could clarify some of the abovementioned issues with the Waukesha County Corporation Counsel. Mr. Kolb asked if the petitioner would be satisfied with the land division only being determined today, however, there is a possibility that there may be problems building houses on both lots? Ms. Schmitt replied the issue today is to split the lots and she believes both of the lots are buildable. Mr. Kolb suggested that legally, the Commission should be deciding the land division issue today.

Ms. Moore arrived at the meeting. Mr. Mace asked Ms. Moore when the EC category went into effect? Ms. Moore responded in approximately 1998 or 1999. Ms. Schmitt submitted perk tests from 2001 and documentation from Ms. Moore, which requested that Mr. Hillmer from Hillmer Engineering needed to designate the building envelope in that area. She noted the revision was completed in November 2001. Ms. Moore noted that it was before COMM 83 systems. She wondered if any other part of the lot was perked under the new Commerce Code. Mr. Mace said that it is unknown. Ms. Schmitt said she would like to keep the location of the building envelope where it is currently and is willing to replace any trees in order to move forward with the matter. Ms. Moore said in the RRD-5 District, the development must be located out of the Prime Ag soils. Attorney Roeker disagreed, and stated there is no specific language in the Ordinance, which states that fact. Ms. Schmitt said a nearby residence was built within the last two years. Ms. Moore said that particular lot was created more than two years ago. Mr. Mace added (in that instance), that the right to a reasonable use could not be denied because it would be considered a taking. As Ms. Moore remembered, the reason the request was denied before was that it was determined there was not a safe access. Mr. Baade asked why the petitioner was not allowed to rotate Lot 1 in order to provide less frontage on the road? Ms. Moore said the issue is whether or not it meets the intent of the current zoning district. There are issues with the Prime Ag soils. The Ordinance states if the property is partially in and partially out of the EC the building envelope cannot be located in the EC. Attorney Roeker disagreed and felt the property meets the intent of the Ordinance. Mr. Goodchild, Mr. Kolb and Mrs. Willert said they were not against the land division itself. Mr. Mace said the Staff is setting the stage by including other considerations in its recommendation. He added, it would be wrong to approve a land division knowing the problems outlined and if the property was sold and the buyer finds out later that he cannot build in the location (EC) where he intended. Attorney Roeker argued that it is an issue for Ms. Schmitt and the Developer. Mr. Mace and Ms. Moore strongly disagreed, stating there would be a recorded CSM with a building envelope in the EC and the Ordinance states the residence cannot be built in the EC. Ms. Schmitt argued that she was directed by Ms. Moore to place the building envelope in the EC and concurred with her request. Ms. Moore said she would have never said to build a house in the EC. Mrs. Willert said there is plenty of room to build the house on the southern portion of the lot outside of the EC. Ms. Moore stated the Staff cannot recommend something the Ordinance does not allow. Mr. Kolb said the land split is the concern of the issue today and the placement of the building envelope would be decided by the Town.

After discussion, Mrs. Haukohl moved, seconded by Mrs. Willert for denial in accordance with the "Staff Memorandum". The motion was defeated by a vote of 4 to 1 (Mr. Goodchild, Mr. Kolb, Mr. Baade and Mrs. Willert voted against and Mrs. Haukohl vote in favor).

Ms. Moore said the Staff's concern is if the buyer of the property comes in with a building envelope in the EC, the Staff cannot issue the permits in accordance with the Ordinance. Another concern is if building can be restricted on Class I and II soils in the RRD-5 District and if the petitioner can create a five-acre lot or if the division of the parcel would require rezoning of the property. Mr. Mace asked if the Town Plan Commission has approved the issue? Mr. Turk replied, the matter is scheduled for tonight's meeting. Ms. Schmitt said it is being deferred because she was unable to obtain legal counsel for the meeting. Mr. Mace expressed concerns that the Commission does not have the right to create parcels, which do not meet the Zoning Code. In addition, the Town Plan Commission denied the matter. Attorney Roeker disagreed and said that the property does meet the Zoning Code. Mrs. Haukohl said she would like the Staff to come back before the Commission with conditions that they feel comfortable with in order to recommend approval of this issue. Mr. Mace suggested the Staff confer with the Waukesha County Corporation Counsel in order to resolve Attorney Roeker's questions and issues. Attorney Roeker said the matter has been an ongoing issue since 2001 and the petitioner needs to move forward. Mr. Turk said the Town may agree to the idea of rezoning the property. Ms. Schmitt said she does not wish to rezone the property because she was told the RRD-5 was an appropriate category.

After discussion, Mrs. Willert moved, seconded by Mrs. Haukohl and carried unanimously, to refer the matter back to the Planning and Zoning Division Staff. The Staff will clarify with the Waukesha County Corporation Counsel, the intent of the Waukesha County Zoning Code regarding building within the Environmental Corridor on lots which are partially in and partially out of the corridor (EC District only), in the RRD-5 District if building can be restricted on Class I and II soils and if the petitioner can create a five-acre lot or if the division of the parcel would require rezoning of the property. Further, the Planning and Zoning Division Staff would come back with suggested conditions if the land division can occur in the existing zoning categories.

• **SCS-829A (S & T North Shore, LLC) Town of Brookfield, Section 29**

Mr. Mace presented the "Staff Memorandum" dated April 28, 2005, and made a part of these Minutes. He pointed out the location of the property on the north side of Bluemound Road, approximately one mile east of Barker Road in the Town of Brookfield on the aerial photograph and stated the petitioner is requesting to create a lot not abutting a public road.

Mr. Mace indicated the property was the subject of a proposed Land Use Plan Amendment earlier this year. The petitioner is proposing to divide the 7.45-acre parcel into a 4.45-acre parcel (multi-family development) and a three-acre parcel (Lexus of Brookfield Service facility). Access to the property is via a private road from both the west and south. Jennifer Court would service the Lexus facility from Bluemound Road and will be connected to the Elite Tennis Club's road, resulting in a through road. At the public hearing, the matter was discussed and the plan for the multi-family development is no longer valid. He explained, the Land Use Plan indicated there could only be 24 buildings, which may change depending on the navigability determination for the pond which lies to the north. In addition, there is an easement which the previous owner gave to the Elite Tennis Club for parking. The previous plan violated the easement. The matter of parking for the tennis club will have to be worked out, which will result in a reduction of units for the multi-family development, unless the Tennis Club decides it doesn't need the additional parking. He was under the impression the tennis club needs the additional parking for its members and the issue will have to be worked out.

After discussion, Mrs. Willert moved, seconded by Mr. Goodchild and carried unanimously, for approval, as conditioned, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.

ADJOURNMENT

With no further business to come before the Commission, Mr. Kolb moved, seconded by Mrs. Haukohl to adjourn at 3:40 p.m.

Respectfully submitted,

Ellen Gennrich
Secretary

EG:kb